

# **Appendix D – Real Estate Plan**

## **Matagorda Ship Channel, Port Lavaca, Texas**

Feasibility Report and Environmental Impact Statement,  
Review of Completed Projects,  
Calhoun and Matagorda Counties

December 2018

- PA P1 is a 248-acre upland placement area (Figure 12). This placement area crosses three separate tracts of land totaling 956 acres of property acquired by CPA on 29 February 2016. It has the capacity to provide the project with space to place 1.5 mcy of new work and 21.1 mcy of future maintenance dredged material, however it will only be used if contaminated materials are found within the dredge template. If used, the NFS will receive LERRD credit for this land, as they have not received credit previously.
- A 90-foot wide easement stretching from the bay at the end of Stephen Avenue across Farm-to-Market Road 2760 (Figure 13). This easement will partially meet the need for the pipeline(s) necessary to move contaminated dredged material from the bay to upland PA P1.
- 63,010 acres of bay bottom from which they can create land (Figure 14). CPA acquired 11,860 acres of submerged land from the State of Texas (state tract nos. 111, 111A, 112, 113, 137, 138, and 138A as well as Gulf of Mexico tract nos. 629S, 630S, 635S, 636S, 637S, 638S, 639S, 642S, 643S, 644S, 645S, 646S, 647S, 653S, and 654S) on 31 March 1998 recorded in Vol. 202/Pg. 619. CPA acquired 3,385 acres of submerged land from the State of Texas (state tract nos. 22, 23, 24, 26, 28, 38, 140, 141, and 142) on 25 April 1998 recorded in Vol. 202/ Pg.612. CPA also acquired 47,765 acres of submerged land from the State of Texas on 13 October 1956, recorded in Vol. 26-B/No. 369. The capacity of these areas are not defined by the current DMMP. Due to navigation servitude, these areas will not be creditable to the NFS.

#### 4.2.4 *New Real Estate Requirements*

In the event contaminated dredged material is found, a utility/pipeline easement from the bay to PA P1 will be required. The NFS has already secured a 90-foot wide easement from the bay across Farm-to-Market Road 2760, however a new utility/pipeline easement will need to be acquired from the intersection of Farm-to-Market Road 2760 and Stephen Avenue south to PA P1 (Figure 13). The additional easement will be 30-feet wide by approximately 1,928 feet long, totaling 1.33 acres and impacting three tracts. If determined necessary for the project, the NFS will need to provide an easements to USACE for use of the utility/pipeline and PA P1.

### 4.3 **Navigation Servitude**

Navigation Servitude emanated from the Commerce Clause of the Constitution of the United States, Article I; Section 8, Clause 3. The servitude gives the Federal Government the right to use the "Navigable Waters" of the United States without compensation for navigation projects. These are non-transferable rights, and are not considered interest in real property. The Federal Government's rights under navigation servitude exist irrespective of the ownership of the banks and bed of a stream below the ordinary high water mark and irrespective of western water rights under prior appropriation doctrine.

There will be navigational servitude associated with the MSC project as it meets the two-step determination of availability process: the project is an aid to commerce and the lands are below the ordinary high water mark. The widening of the existing MSC and creation of the proposed open water placement areas (NP1-NP7 and OP1-OP10) would occur entirely within navigable waters and would be constructed under navigational servitude.

### 4.4 **NFS Real Estate Placement Area Interest**

#### 4.4.1 *New Work Placement Areas (Figure 15)*

Table 3 illustrates the proposed placement areas that will be utilized for placement of dredged material from new work being performed. The CPA owns the submerged lands where the new, open water PAs will be created in Matagorda Bay, but navigational servitude is applicable. The capacity for P1 is 2.3 mcy and the combined capacities of NP 1 – NP 7 total 14 mcy.



acres of submerged lands owned by CPA, therefore no real estate costs are anticipated for oyster mitigation.

If contaminated dredged material is found, placement of that material in upland PA P1 would result in the loss of 1.5 acres of marsh. Locations for performing the mitigation have not yet been identified. The environmental lead is coordinating with local resource agencies to solidify a plan and this section of the REP will be updated once finalized. The cost to acquire 1.5 acres of land for mitigation is included in the Baseline Cost Estimate for Real Estate (Table 5) in Section 7.

At this point in the feasibility stage, no mitigation related to shoreline erosion from larger vessels navigating the channel is expected. Engineering conducted a ship wake study and determined the 4" vertical difference in wakes to be insignificant and too minimal to cause beach erosion.

#### **4.6 Borrow Material**

The proposed project does not require borrow material.

#### **4.7 Access/Staging Area**

It is anticipated that the project will not require access or staging areas. If access or staging areas are required in the future, the REP will be updated to include this information including cost associated with any temporary work area easements necessary and the duration of those easements.

#### **4.8 Recreation Features**

There are no recreation features proposed for this project.

### **5 Existing Federal Projects and Federally Owned Lands**

The existing MSC is a Federal project that has used PA 1, PA 5 to 12, PA 14 to 19, PA 116-B, DA 2, and DA 3 for unconfined placement of maintenance dredged material (Figures 6, 7, and 8). The Gulf Intracoastal Waterway (GIWW) crosses the MSC. There are no impacts anticipated to the GIWW, and no additional lands will be purchased or leased in this area. Within the project area are Coastal Barrier Resources System, Texas Audubon Society bird sanctuary, and Otherwise Protected Areas (Figure 18).

The Coastal Barrier Resources Act (CBRA) of 1982 established the John H. Chafee Coastal Barrier Resources Systems (CBRS), a defined set of geographic units along the Atlantic, Gulf of Mexico, Great lakes, U.S. Virgin Islands, and Puerto Rico coasts. Most new Federal expenditures and financial assistance are prohibited within the CBRS, unless those activities qualify for an exception under Section 6 of CBRA (16 U.S.C. § 3505).

The RHA of July 3, 1958 authorized the construction of a deep draft-navigation channel from the Gulf of Mexico across Matagorda and Lavaca Bay. While the proposed project footprint is within the CBRS it is expected to receive an exception under Section 6:

A federal expenditure is allowable within the CBRS, if it meets any of the following exceptions (16 U.S.C § 3505(a)(1)-(5)):

The maintenance or construction of improvements of existing federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction. A federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System unit was included with the CBRS.

